

# Cablefax Daily™

WHAT THE INDUSTRY READS FIRST

## Megaphone: Stakeholders Get Final Words In Before Title II Vote

The **FCC** is widely expected to adopt an order at its open meeting Thursday that would place broadband under a Title II regulatory framework, and stakeholders are using every moment before the vote to advocate for changes big and small to the draft order.

Commissioner *Anna Gomez* has had a notable open-door policy in recent weeks, hosting a series of roundtables inviting those interested to voice their concerns or support for the Title II order. While the conversations were held behind closed doors, her office released the audio into the Commission's net neutrality docket on Tuesday.

**ACA Connects** Chief Regulatory Counsel *Brian Hurley* was on hand at one of those sessions advocating for the association's members, urging the Commission to abandon its pursuit of a Title II regulatory regime. But at minimum, he would like to see the final order be modified to ensure that the burden placed on small providers is as minuscule as possible. His major concern with the broader impact of Title II regulation is that the nature of that framework is very vague, and examining each service offering or construction project through that lens to determine what's reasonable is daunting for small providers that can't count on an in-house legal department. The general conduct rules included in the order are not much better with even an included list of relevant factors to consider being nonexhaustive.

"These sweeping mandates, they'll add unnecessary friction

to our members' business decisions at a time when they're working to expand connectivity and help close the digital divide," he said. "As one of my member company executives told me in a conversation earlier this week, every dollar we spend on regulatory compliance is one dollar we don't invest in our networks."

He asked Gomez and her staff to consider deferring enforcement of Sections 201 and 202 of the order as well as the general conduct rule for six months from the effective date of the order, at least for smaller providers. The approach would be similar to that taken by the Commission in the order enacting its digital discrimination rules.

**Public Knowledge** Government Affairs Policy Advocate *Nat Purser* took time during one roundtable discussion to discuss the issue of how the FCC's Title II order would preempt the laws states have already put in place to block throttling of service, among other things. She believes state laws that go further than the FCC's rules are still compatible with the Commission's approach in the Title II order, and pushed for states to be allowed to maintain the flexibility to innovate and enforce their own laws so long as they don't conflict with federal rules.

"States play an important role in broadband consumer protection, and they should be empowered to build on the FCC's work as they see fit," Purser said. "Additionally, since state and federal legislators have implemented a variety of initiatives to enhance broadband to fill affordability since 2015 like the ACP, we want to ensure that these strides towards universal service are not undone by overbroad forbearance."



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Stakeholders have also been speaking up when it comes to the aspects of the Title II order that relate to the future of the Universal Service Fund. In an ex parte, **WTA-Advocates for Rural Broadband** has asked the Commission to delete any discussion of forbearance related to USF contribution. Instead, it would like the agency to defer the question of whether and how to assess USF contributions upon internet service to be included as part of a broad rulemaking looking to reform and expand the USF contribution system.

During one of Gomez's roundtables, **INCOMPAS** President *Angie Kronenberg* said the Commission, rather than forbearing, should temporarily waive the requirement pending further consideration of contribution reform. She argued the FCC has never conducted a forbearance proceeding and would likely face significant opposition and legal challenges, and it shouldn't tie its hands when it comes to a full consideration of USF contribution reform in the future.

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### **OPTIMUM ADDING THEGRIO**

**Altice USA** will launch **TheGrio** to **Optimum** customers beginning May 21, making it available to those subscribing to Optimum Core and above packages. The **Allen Media Group** channel is available in nearly 50 million homes and carries HBCU football and basketball games. Earlier this month, it acquired five classic sitcoms: "The Jeffersons," "Sanford and Son," "Diff'rent Strokes," "227" and "The Cosby Show." TheGrio is available through several other providers, including **Charter, Comcast, Cox, DirecTV, DISH, Hulu** and **Verizon Fios**.

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### **FTC BANS NON-COMPETES**

The **FTC** voted 3-2 Tuesday to ban noncompete clauses for U.S. workers across virtually all business sectors, including telecom. The **U.S. Chamber of Commerce** has already said it will sue over the rule, which prevents employers from limiting their employees from working for rivals. "This decision sets a dangerous precedent for government micromanagement of business and can harm employers, workers and our economy," said Chamber President/CEO *Suzanne Clark*. **ACA Connects** President/CEO *Grant Spellmeyer* suggested such clauses could impact America's goal of closing the digital divide. "Many members rely on reasonable and narrowly tailored non-compete agreements to invest in training their employees so they have specialized skills required in the broadband industry. Others rely on these agreements to provide equity rewards to their employees," he said in a statement. "With this skilled workforce, our members can meet the bipartisan goal of closing the digital divide in the hardest to reach communities in America." Under the FTC's new

rule, existing noncompetes for the vast majority of workers will no longer be enforceable after the rule's effective date, which is 120 days after publication in the Federal Register. Legal challenges could potentially interfere with implementation though. Existing noncompetes for senior executives, which the FTC said represent less than 0.75% of workers, can remain in force under the FTC's final rule, but employers are banned from entering into or attempting to enforce any new noncompetes, even if they involve senior executives. Employers will be required to provide notice to non-senior executive workers that they will not be enforcing any noncompetes against them. "Noncompete clauses keep wages low, suppress new ideas, and rob the American economy of dynamism, including from the more than 8,500 new startups that would be created a year once noncompetes are banned," FTC Chair *Lina Khan* said in a statement.

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### **NEXSTAR FIGHTS FCC NAL**

Not surprisingly, **Nexstar** is objecting to the **FCC's** \$1.2 million fine and divestiture requirements for **WPIX**. Last month, the issued a Notice of Apparent Liability finding that Nexstar and **Mission Broadcasting** apparently willfully and repeatedly violated several Commission rules, including its 39% national audience cap, through their **WPIX** transactions. "Through the NAL, the Commission seeks to wield its enforcement authority in a myriad of improper ways. It argues that Nexstar violated the Communications Act by performing the express terms of agreements that the FCC previously reviewed and approved. It seeks to rewrite FCC rules without a notice-and-comment rulemaking proceeding. It adopts new interpretations of FCC rules that are unsupported or even contradicted by precedent without prior notice or reasoned explanation," Nexstar said in an FCC filing challenging the NAL this week. "It creates entirely new regulatory requirements without prior notice or due process. It applies standards that are vague and unsupportable." **Comcast, Charter, DirecTV** and **Cox** have all argued that Nexstar should actually be attributed ownership of NYC station **WPIX**, which would make it in violation of the 39% cap on national audience reach. In 2019, Nexstar agreed to divest **WPIX** as well as **WSFL** in Miami and **KASW** in Phoenix in order to stay under the 39% ownership cap following its \$4.1 billion acquisition of **Tribune**. Nexstar sold **WPIX** to **ScrIPps**, but it retained the option to repurchase the station—presumably in case the national ownership cap was increased or it divested more stations. It later assigned its purchase option to **Mission Broadcasting**, which exercised it and closed on the acquisition in December 2020. Nexstar then executed a local marketing agreement with **Mission** that gives it the rights to program the station, sell ad time and receive 100% of the station's revenues. Nexstar said that agreement was reviewed and approved by the FCC in late 2020 as a part of **Mission's** acquisition of **WPIX**. "Nonetheless, the

NAL now finds that the very same [agreement] confers de facto control of WPIX to Nexstar,” the broadcaster said in its request for the FCC to vacate the NAL.

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## COMCAST DEBUTS WIFI SPEED BOOST FOR CUSTOMERS

After [teasing WiFi Speed Boost](#) at **Comcast** Converge in February, the company has rolled the offering out to all Xfinity Mobile and Comcast Business Mobile customers. It's a similar feature to **Spectrum Mobile's** Speed Boost that was introduced last year. Eligible Comcast users will be able to access the more than 23 million Xfinity Mobile hotspots across the U.S. and receive internet speeds of up to 1 Gbps. According to Comcast, 90% of mobile data traffic on Xfinity Mobile devices travel over WiFi instead of cellular.

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## CARRIAGE

**DirecTV** inked new licensing deals with **Cineverse** and **Scripps Networks** that will add seven new channels to its streaming lineup. Under the Scripps deal, **Court TV** and **Scripps News** are immediately available to DirecTV customers' streaming entertainment. DirecTV is launching Cineverse's **The Bob Ross Channel**, **Comedy Dynamics**, **Dog Whisperer with Cesar Millan**, **Dove Channel** and **MeatEater TV** and will identify other networks from the Cineverse portfolio to potentially add to its streaming lineup in subsequent months. The channels are immediately available to any DirecTV customers subscribing to the Entertainment package or above who receive their content via streaming, as well as any satellite customers who want to access them through the DirecTV App. – **Hemisphere Media Group** is launching its FAST channel **WAPA+** on **The Roku Channel** today. The channel, which claims to be the only one focused on the Puerto Rican community in the U.S., features entertainment programming from Puerto Rico's WAPA-TV. It also includes daily live newscasts of local and international news from “NotiCentro América” and “Ahí Está la Verdad” (There Is the Truth). – **Comcast** Xfinity and **Xumo** streaming devices are adding a pair of **Cineverse** SVODs to their lineups: **AsianCrush** and **RetroCrush**. They'll be available on Xfinity X1, Xfinity Flex, Xumo Stream Box and Xumo TV. Both platforms are priced at \$4.99/month or \$49.99/year. – **Plex** is jumping in on the **NFL** Draft frenzy. The streamer introduced an **NFL Channel** ahead of Thursday's draft ceremony. It'll have analysis and predictions from various experts on prospects in addition to replays from previous drafts and other throwback content.

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## RATINGS

“Bluey” had its first extended-length special with “The Sign,” and it became the most-viewed Bluey episode premiere and most-viewed **Disney Junior** episode premiere ever. The special, which premiered April 14, had 10.4 million views globally on Disney+ after seven days. – **ESPN** saw the first-round games of the Stanley Cup Playoffs on Sunday average 1.04 million total viewers

and 429,000 P18-49 across ESPN and **ESPN2**. That's good for 65% and 48% increases, respectively, compared to the Game 1 average in 2023. The Capitals vs Rangers opening contest was the most-viewed Game 1 of a first-round NHL Playoff series ever on cable with an average of 1.3 million viewers (peaking at 1.5 million) and 526,000 P18-49. Then, the Avalanche vs Jets became ESPN2's most-watched first-round NHL Playoff game ever with 1.1 million total viewers and 456,000 P18-49. – This week's Sunday Night Baseball contest between the Rangers and Braves garnered 1.62 million viewers on **ESPN**, good for a 24% improvement from the comparable game last year. The broadcast peaked at 1.86 million viewers at 9:30pm. Through four games so far this season, Sunday Night Baseball viewership is up 30% YOY with an average of 1.74 million.

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## PROGRAMMING

**Disney** is reportedly ready to step onto the pitch. *The Athletic* [notes](#) the Mouse House is in talks with English giant Manchester United about a multi-million-dollar deal that'd see Disney make documentaries centered on the club to be put on **Disney+**. Specifically, the docs would focus on the club's successful era under Sir Alex Ferguson. – **MAVTV** will have live coverage of the GAA Classic Cars Auction this Friday and Saturday. Auctions are set to begin at 9:30am on both days. The network will also have live coverage for the remaining GAA auctions in 2024, which are scheduled for July 26-27 and Nov. 8-9. – The ninth season of **Bravo's** “Below Deck Mediterranean” will begin with an extended 75-minute episode come June 3 at 9pm. Episodes will be available to stream the following day on **Peacock**.

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## PEOPLE

*Jo Ann* Ross is set to step down as **Paramount Global's** Ad Sales Chairman at the end of the month. Variety first reported the [news](#). Ross, the first female sales chief for run a broadcast network, stepped back significantly in 2022 when *John Halley* took on the role of Paramount Advertising President and she moved to the chairman role. – A week after wrapping up this year's **NAB Show**, the association is handing President/CEO *Curtis LeGeyt* a contract extension that'll see him remain at his post through 2029. LeGeyt first joined NAB in 2011 before being named to his current position in January 2022. During his tenure, he's taken on issues including the deployment of ATSC 3.0, broadcast regulatory fees for local stations and the **FCC's** broadcast ownership rules. – **NCTA** is bringing on *Russ Hanser* as Deputy Chief Legal Officer. Hanser comes from the Department of Commerce, where he helped oversee efforts pertaining to broadband subsidy programs that came from the Infrastructure Investment and Jobs Act, cybersecurity, supply chain integrity, AI policy and other matters. Hanser held various roles including **NTIA** Associate Administrator for Policy Analysis and Development as well as Director, Communications Policy Initiatives. He also was a Senior Policy Advisor to Commerce Secretary *Gina Raimondo*.